

EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3
4 IN RE: NEW ENGLAND) MDL NO. 13-2419-RWZ
5 COMPOUNDING)
6 PHARMACY CASES LITIGATION)
7)
8)
9)
10)
11)

12 BEFORE: MAGISTRATE JUDGE JENNIFER C. BOAL

13
14 MOTION HEARING

15 John Joseph Moakley United States Courthouse
16 Courtroom No. 2
17 One Courthouse Way
18 Boston, MA 02210

19 JULY 17, 2014
20 2:30 p.m.

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22
23 Valerie A. O'Hara, FCRR, RPR
24 Official Court Reporter
25 John Joseph Moakley United States Courthouse
One Courthouse Way, Room 3204
Boston, MA 02210
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1 THE COURT: So that's all welcome that you
2 have done so much work and agreed on many areas. Are
3 you proposing this framework to apply just to the
4 St. Thomas -- I may have captured that wrong, but the
5 St. Thomas defendants and the Tennessee defendants,
6 because obviously we have other groups of defendants?

7 MR. CHALOS: Right. Yes, your Honor, our
8 notion is that this order would serve as a framework
9 specifically for the St. Thomas defendants. There are
03:06PM 10 other clinics where they had a number of patients died
11 or suffered serious injury, so, and those are Virginia
12 and Michigan and New Jersey and Florida. They may need
13 their own orders in those cases.

14 THE COURT: It sounds as if I would need to
15 convene a separate Rule 16 conference, I mean, if
16 Judge Zobel would like me to do that, that a separate
17 Rule 16 conference would need to be convened for those
18 clinics?

19 MR. CHALOS: I think so, and we don't know
03:06PM 20 to what extent those cases will be resolved, and I
21 understand there may or may not be discussions with
22 groups, I don't want to disclose anything confidential,
23 but you may or may not have to do that, I guess.

24 THE COURT: What is your view with respect
25 to what are the so-called national defendants?

1 MR. CHALOS: Well, the schedule as we've
2 proposed it and in particular the schedule that we're
3 now coming to some agreement with the St. Thomas
4 Hospital defendants on would allow for those defendants
5 to decide whether they're going to continue mediating
6 and resolve the claims against them or they're going to
7 get into litigation, and if they're in litigation, some
8 of these cases also named them as parties, so to the
9 extent there are any remaining national defendants, they
10 would be subject to, you know, these deadlines, and
11 they'd be part of these cases.

03:07PM

12 Now, it remains to be seen how many of those
13 will still be in the case. You know, the bankruptcy
14 settlement will resolve the claims against a majority, a
15 vast majority of the national defendants. We've
16 resolved through mediation some of the other defendants,
17 claims against some of the other defendants, but, yeah,
18 they would be subject to this, and, you know, if they
19 for some reason felt -- well, let me back up. They have
20 an opportunity now through the MDL courts, mediation
21 program to resolve the claims.

03:08PM

22 If they choose not to, then, you know, we
23 have to go to trial, and we shouldn't wait any longer,
24 and we've already waited two years, and we shouldn't
25 wait any longer because they can't decide to settle or

1 not settle. Everybody has been aware of this litigation
2 for two years. They say they are just now parties, but
3 we know they hired lawyers two years ago, so we think we
4 ought to move forward and not delay because there's a
5 possibility there may be additional defendants.

6 MS. PARKER: If I may, your Honor.

7 THE COURT: Yes.

8 MS. PARKER: I agree with Mr. Chalos, the
9 framework that we have set forward we expect will be a
03:08PM 10 helpful reference point for talking about the scheduling
11 with other defendants. There are certainly other
12 defendants out there who, in particular, I'm thinking of
13 Liberty who is trying to aggressively push for
14 discovery.

15 I don't see counsel for Liberty in the
16 courtroom today. I'm sure they want to be heard on
17 these subjects, so while we think this plan will be
18 helpful as perhaps a benchmark or sample, I think we
19 want to make sure all defendants are heard from on these
03:09PM 20 issues.

21 I wouldn't want to paint all of the
22 defendants with this particular Tennessee centric brush.
23 That said, we do think it would be a mistake at this
24 point in time to wait to address some of these Tennessee
25 issues on which there has been meeting and conferring

1 and agreement and some forward progress until all other
2 defendants could come into this court and comment on
3 what they would like their discovery plans to be.

4 THE COURT: Have the plaintiffs provided
5 completed fact sheets?

6 MS. PARKER: We have not, your Honor. It
7 occurred to me that it might actually be helpful to
8 describe for you what discovery has been done so far to
9 give you sort of the broader framework.

03:10PM 10 THE COURT: Yes.

11 MS. PARKER: So as of now, all defendants in
12 the MDL have been provided the opportunity to access the
13 document repository that contains all formal discovery
14 produced so far in the MDL. That includes primarily
15 documents that were produced by clinics and doctors in
16 response to subpoenas served by the PSC early on. It
17 also includes materials that were informally produced by
18 the trustee from NECC's files. I believe the last
19 figure Mr. Fern gave us at the status conference was
03:10PM 20 that there were about 44,000 pages of documents that had
21 been informally produced by NECC.

22 The PSC has also provided access to --
23 produced, we've formally produced it, the PSC formally
24 produced materials relating to our original inspection
25 of the NECC facility back in December of 2012. Those